



Local Project Administration

Certification Course Manual & Reference Guide

March 2007

Civil Rights
(DBE) and (OJT)
Davis Bacon

Disadvantaged Business Enterprise (DBE) Program

Program manual available at:

<http://www.state.me.us/mdot/disadvantaged-business-enterprises/dbe-home.php>

or by calling Jackie LaPerriere @ 207-624-3066

Memorandum

Date: January 2007

To: Locally Administered Projects Personnel

From: Holly Anderson, Manager, MaineDOT Civil Rights Office

RE: DBE Activities

In accordance with Federal Regulation 49 CFR 26, the Maine Department of Transportation sets the Disadvantaged Business Enterprise (DBE) participation level from October 1 through September 30. LAP Personnel are reminded to verify the adjusted goal each year at the onset of the Federal Fiscal Year (October 1).

The target is for DBE participation in all contract work funded in whole or in part with federal funds. Such projects may include Consulting (Design, R-O-W, Geotechnical, Utilities, Public Process/Hearings, and Environmental) or Construction (Inspection, Testing, all project specific applications, and project management (including payroll services/record keeping). A DBE can be a Prime or subcontractor/subconsultant. Only that work actually performed by the DBE is creditable to any project goal. See the DBE Program Manual for specific guidance (document incorporated within the LAP Course Manual or at www.mainedot.gov (go to Doing Business, then Contractor section and click on "Disadvantaged Business Enterprise").

The DBE program is not a voluntary effort. Federally funded project recipients must examine each aspect of a contract to access opportunities for DBE participation at a percentage that is meaningful for that specific project. Only those firms certified by MaineDOT as DBEs at the time of bidding are to be considered. See the MaineDOT Directory of Certified Businesses at www.mainedot.gov and follow the links as above, but to the DBE Directory. Note the DBE Directory is regularly updated.

Use the following checklist in compliance with DBE activities:

- 1. ___ Use MaineDOT's up-to-date DBE Directory to identify DBE firms.**
- 2. ___ At Bid Opening or with Technical Proposal, submit DBE Utilization form & get signed approval.**
- 3. ___ Maintain documentation of work in progress.**
- 4. ___ Upon completion of the project submit Certification of Final DBE Payment Form signed by both Prime & DBE attesting to work completed and payment made according to acceptance by Project Management.**
- 5. ___ Report DBE problems to Project Management or to MaineDOT's Civil Rights Office.**

Generally, a recommendation of award may not be made *if* the information is not provided or *if* efforts to gain DBE participation are insufficient.

Firms who acquire DBE status after award *may* have their work credited via a change order.

Once a commitment has been affirmed through the DBE Utilization form, no change in utilization can occur without written authorization from the Civil Rights Office.

If in doubt, call -Jackie LaPerriere at 207-624-3066 or Holly Anderson at 624-3349.

____ Original Submission

Page ____ of ____

____ Revision # _____

**MaineDOT CONTRACTOR'S DBE/SUBCONTRACTOR
PROPOSED UTILIZATION FORM**

Low Bidder must furnish this form to Contracts Section Bid Opening day.

Contractor: _____ Telephone: _____ Ext. _____

Prepared by: _____ Fax: _____

BID PRICE: \$ _____ BID DATE: ____/____/____

FEDERAL PROJECT PIN # _____ PROJECT LOCATION: _____

TOTAL DBE _____ % PARTICIPATION FOR THIS SUBMISSION

W B E•	D B E•	Non DBE	Firm Name	Unit/Item Cost	Unit #	Description of Work & Item Number	Actual \$ Value
Total >							

Contractors must make a good faith effort to include Certified DBE firms in all aspects of the project. If no DBE firms are to be part of this project, a detailed explanation is required. Attach supporting evidence to the maximum participation of DBEs on this project. This is a requirement. This evidence must include name of firm(s) contacted, date contacted, and outcome of solicitation.

Equal Opportunity Use:

Form received: ____/____/____ Verified by: _____

____ Accepted ____ Rejected _____

cc: ☐ Contracts ☐ Other _____

- WBEs are non-minority women owned firms certified by MaineDOT
 - DBEs are male and minority owned firms certified by MaineDOT
- For a complete list of certified firms go to <http://www.maine.gov/mdot>

____ Original Submission

Page ____ of ____

____ Revision # _____

**MaineDOT CONSULTANT'S DBE/SUBCONSULTANT
PROPOSED UTILIZATION FORM**

Must be provided as an attachment to each New or Revised Technical Proposal

Consultant: _____ Telephone: _____ Ext _____

Prepared by: _____ Fax: _____

TOTAL CONTRACT/MODIFICATION AMOUNT: \$ _____ DATE OF EXECUTION: ____/____/____
(For Department Use Only)

FEDERAL PROJECT PIN # _____ PROJECT LOCATION: _____

TOTAL DBE _____ % PARTICIPATION FOR THIS SUBMISSION

W B E •	D B E •	Non DBE	Firm Name	Description of Work & Item Number	Actual \$ Value
Total >					

Consultants must make a good faith effort to include Certified DBE firms in all aspects of the project. If no DBE firms are to be part of this project team, a detailed explanation is required.

Equal Opportunity Use:

Form received: ____/____/____ Verified by: _____

____ Accepted _____ Rejected _____

cc: ☐ Contracts ☐ Other _____

- WBEs are non-minority women owned firms certified by MaineDOT
- DBEs are male and minority owned firms certified by MaineDOT

For a complete list of certified firms go to <http://www.maine.gov/mdot>

Rev. 6/06

CERTIFICATION OF FINAL DBE CONSULTANT PAYMENT

Consultant submit to: Project Manager with final Project documentation.

Complete one form for each DBE Participant

Project Number and Location: _____

Total DBE Participation \$ _____ % _____

In connection with the above referenced contract we the undersigned, jointly certify and attest the following information to be true.

1. DBE Firm's Name: _____
2. Describe work performed by DBE on this project: _____

3. Total amount paid to DBE to date: \$ _____
4. Total amount remaining to be paid to DBE \$ _____
5. Is amount paid to DBE expected to increase when final invoice is submitted:
Yes ____ No ____
6. If yes, approximately how much? \$ _____

Attest:

CONSULTANT

DBE

(Firm's Name)

(Firm's Name)

(Signature)

(Signature)

(Title)

(Title)

(Date Signed)

(Date Signed)

On-the-Job Training (OJT) Program

Program manual available at:

<http://www.state.me.us/mdot/disadvantaged-business-enterprises/dbbe-home.php>

or by calling Gigi Ottmann-Deeves @ 207-624-3036

TO: Holders MaineDOT OJT Manual
FROM: Holly Anderson, Civil Rights Manager MaineDOT/ Project Dev.
DATE: January, 2006
SUBJECT: Revised OJT Manual

The primary goal of the On-The-Job Training (OJT) Program is to offer equal opportunity for the training and upgrading of women, minorities, and socially and economically disadvantaged persons toward journey-level status.

Though minorities had been employed in highway construction, they were usually assigned the more labor-intensive jobs that were unskilled and lower paying. Statistically women make up 51% of today's workforce, therefore, a conscientious effort has been made to train and employ women in non-traditional occupations.

In advance, we acknowledge your cooperation and efforts to fully integrate women and minorities into your workforces. We all understand a diverse workforce is needed to support the Bridge and Highway Construction Industry in the near future.

Highlights of the On-the-Job Training Program

- Contractors having a top down commitment to the OJT program in general, seem to take equal opportunity more seriously.
- EEO Officers supported by top management find managing the company's OJT program easier, and are more likely to carry out their duties in full support from the Company's owner(s).
- Trainees who know and are routinely visited by the Company EEO Officer are better informed of company policies and procedures.
- Trainees indicate they like working outdoors in the road and bridge industry, learning new things and find these jobs pay a living wage.
- Clearer guidelines for submission/reporting process and change orders.
- Trainee wages:
 - Bridge/ Highway laborers at Davis Bacon level.
 - Skilled Crafts a minimum of 75% of Davis Bacon, or minimum wage whichever is greater while on MDOT project.
- New specialized training classifications have been developed and more closely defined to the needs of the highway construction industry.
- Trainees better advised that training is not guaranteed in all machinery aspects of the classification and better prepared for construction site conditions.

- Off-site training opportunities. Contractor may move trainee off-site to another federally aided highway construction project with crew and may adjust pay rate accordingly. **Approval from Maine DOT required in advance.**
- Training commitment may be moved from project-to-project with MaineDOT written approval. Credit for hours worked apply to original commitment.
- **Contractor's meeting and exceeding employment goals may apply for an OJT waiver.**
- MaineDOT's OJT Program is applicable in all modal programs - FHWA, FTA, FRA & FAA.
- Contractors can submit new training outlines for use, provided training classifications are in skilled trades where an under-utilization of women and minorities is demonstrated. Prior to preconstruction conference, submit written outline directly to OJT consultant. If accepted, written notice will allow training to begin on current project. Additional training classifications will need to be approved by FHWA Division Office.

We have made efforts to improve the program by:

- Increasing on-going monitoring of Trainees and Contractors during the training period to enhance the successful completion of Trainee and Contractor obligation.
- Recalculating the hours to better reflect today's construction/labor cost relationship.
- Increasing support from the Civil Rights Office.

Policy questions:

**Maine Department of Transportation
Civil Rights Office
#16 State House Station
Augusta, Maine 04333-0016
Telephone: 207-624-3036 Fax: 207-624-3401**

INSTRUCTIONS FOR COMPLETING OJT LETTER OF INTENT

Project Name & Location: state project's name and its location.

Total Training Hours: indicate total hours assigned to the project.

Contractor Name: insert contractor name and insert name of each training classification, include date each OJT program will start.

General instructions for inserting position, gender and race data: for each classification employed by the contractor, indicate total employees, total white males, females, Hispanics, American Indians, Blacks, Asians, Disabled and number recalled.

SUBMIT PRIOR TO START OF WORK

Send to: OJT Monitor
103 Winthrop St., Suite A
Augusta, ME 04333
Tel (207) 623-7576 Fax (207) 623-7299

Project Name & Location:

OJT LETTER OF INTENT

Project name: _____ Project Location: _____

Contractor Name _____ anticipates training in the classifications listed and expect to start each on the below given dates (must reflect total training hours assigned to project):

1. _____ Date: _____

2. _____ Date: _____

3. _____ Date: _____

Report of employment statistics for the entire Company workforce, by hours worked for each craft between April 1 and November 15 for the last calendar year.

Position	Total Employees	White Males	Females	Hispanic	American Indian	Black	Asian	Disabled	# of Recalls
Superintendent									
Operating Engineer									
Equipment Operator									
Mechanics									
Truck Drivers									
Ironworker/Rod									
Carpenters									
Const.Wkr. Bridge									
Const.Wkr.Hwy.									
Pipelayer									
Bridge Maint.Wkr.									
Laborer, Semi-Skill									
Laborer, Unskilled									
Forepers./Bridge									
Foreperson/Hw									
Welder									

Approved by _____

Date: _____

SUBMIT TO: OJT Monitor

SUBMIT PRIOR TO PRE-CONSTRUCTION PHASE

INSTRUCTIONS FOR COMPLETING OJT REGISTRATION/ENROLLMENT FORM

Project Name and Location: insert project name and location of project.

Contractor: insert Contractor name enrolling trainee.

Name: insert name of person to be enrolled.

Address: insert proper mailing address of enrollee.

Phone Number: insert telephone or message number for enrollee (no pager #).

Social Security Number: insert enrollee's Social Security Number.

Ethnic/Protected class: indicate race or ethnicity of enrollee.

Sex: check male or female.

Training Classification: indicate classification name.

Hours: indicate total classification training hours.

New Hire, Upgrade, Other: indicate which category.

Enclosed Copy of: check whichever is accurate.

Start Date: indicate date training commences.

Start Wage: indicate starting wage to % of journeyed wage rate.

Expected End Date: indicate date training completed.

End Wage: indicate ending wage to % of journeyed wage rate.

Site Phone Number: indicate Contractor's on-site telephone number.

EEO Officer: indicate name of company's EEO Officer.

Trainee Signature: trainee signs and dates form.

Employer Signature: Contractor representative signs and dates form.

MaineDOT USE only: for signature and date by _____

Send to: OJT Monitor
103 Winthrop St., Suite A
Augusta, ME 04333
Tel (207) 623-7576 Fax (207) 623-7299

Project Name & Location:

Contractor: _____

OJT REGISTRATION/ENROLLMENT FORM
Include job application/resume

Contractor name: _____

Name: _____,

Address: _____ Me. _____

Phone No: _____ Social Security No: _____

Ethnic/Protected Class: _____ Sex: ____ Male ____ Female

Training Classification: _____ Hours: _____

____ New Hire ____ Upgrade ____ Other, describe _____

Enclosed copy of: ____ Resume or ____ Job Application.

Start Date: ____/____/____ Start Wage: \$_____/hr____% journeyed rate)

Expected

End Date: ____/____/____ End Wage: \$_____/hr____% journeyed rate)

Site Phone No: _____ EEO Officer: _____

No contractor will be given credit until this form is approved by the OJT monitor.

Notice: Per Contract Special Provision 660, should the EEO Officer determine the Contractor has not complied with the approved training program, the number of remaining hours for each trainee will be multiplied by the prevailing wage rate for that particular classification. The resulting figure shall be deducted from the Contractor's final payment.

_____/____/____ _____/____/____
Trainee Signature Date Employer Signature Date

FOR MaineDOT USE ONLY:

Approved By: _____

(cc: MaineDOT on-site representative Contractor, Trainee, File)

Submit to: OJT Monitor

INSTRUCTIONS FOR COMPLETING WEEKLY OJT REPORT

Week Ending: payroll date.

Trainee Name: name of OJT person.

Project Number: project number OJT is registered with.

Location: where the project is located.

Classification: name of classification OJT program trainee is enrolled in.

Wage: hourly rate paid to trainee.

Effective Date: date rate of pay is effective.

State Use Only: construction manager to insert correct hours.

Phase of Training: use guide on training curriculum outline.

Safety/Productivity/Quality/Understanding/Attitude/Attendance: indicate how trainee evaluated in each phase. N=needs improvement A=acceptable E=excellent.

Required hours: total number of hours required in each phase.

Hours accumulated as of last week: total hours accumulated and recorded on previous weeks' form.

Total Hours This Week on-site: record total hours worked on-site this week.

Total Hours This Week off-site: record total hours worked off-site this week.

Total Hours Accumulated to date: record total hours from on and off-site.

Total Hours: add total from each column.

Promotion/Discipline/Dismissal/Quit/Laid Off: check off and explain.

Completed by: signed by Contractor representative.

MDOT representative: signed by Construction manager.

Date: fill in appropriate date.

Job Function: employer writes brief explanation of trainees' work done for week report is completed.

Week Ending: _____

Weekly OJT Evaluation Form

**Maine Department of
Transportation**

Trainee Name: _____ Classification: _____

Project #: _____ Wage: _____

Location: _____ Effective Date: _____

Company: _____
Submit to: Construction Manager
(include for off site training)

STATE USE ONLY

Hours eligible for
reimbursement: _____

N=Needs Improvement A=Acceptable E=Excellent

Phase of Training	Safety	Productivity	Quality	Understanding	Attitude	Attendance	Required Hours	Hours Accumulated as of Last Week	Total Hours This Week on site off site		Total Hours Accumulated To Date
Total Hours											

Date:

Explanation:

_____ ☐ **Promotion** (wage increase: _____)
_____ ☐ **Discipline** _____
_____ ☐ **Dismissal** _____
_____ ☐ **Quit** _____
_____ ☐ **Laid Off** _____

Job Functions
Performed This Week & Other Comments:
(Complete Each Week)

Completed by: _____ Date: _____ Trainee's Signature: _____ Date: _____
(Immediate Supervisor)

MaineDOT Representative: _____ Date: _____

(Copies To: 1-MaineDOT Civil Rights Office, 2-Company, 3-MaineDOT On-site Representative, 4-Trainee)

INSTRUCTIONS FOR COMPLETING CONTRACTOR'S OJT MONTHLY REPORTING FORM

Contractor Name: insert name of company.

Project Name and Location: insert name and location of project.

Date: insert report date.

OJT Obligation: indicate total number of training hours assigned.

Number of Active OJTs: indicate total number of trainees enrolled at report time.

Expected Completion Date of Project: date project work is anticipated to be completed.

Date: indicate date of contacts.

Organization and Name of Person Contacted: indicate contacts.

Method of Contact: indicate how contact was made (i.e., visit, telephone, fax, other).

Results: indicate action resulting from contact.

Follow-up Planned: indicate next step.

OJTs hired during month: indicate trainee name, start date, program enrolled into, and total number of hours required.

OJTs let go this month: indicate trainee name, last date worked, total hours completed, and reason for leaving (i.e., termination, lay-off).

Recruitment Activities: indicate activities planned for month (i.e., visit technical college, NTO Conference, etc.).

Submitted by: signed and dated by Contractor representative.

Contractor's OJT Monthly Reporting Form

Contractor

Project Name

Name _____ & Location _____ Date _____

OJT Obligation _____ Number of Active OJTs _____ Expected Completion Date of the Project _____

1. Recruitment Contacts Made This Month:

Date	Organization and Name of Person Contacted	Method of Contact	Results	Follow-up Planned

2. OJTs hired this month:

OJT Name	Start Date	Training Program	Hours

3. OJTs let go this month:

OJT Name	Date of last day worked	Total # of hours completed	Reason for leaving

4. What recruitment activities do you plan to do this month: _____
Use and attach additional sheets as required.

Submitted by: _____ Date: _____

Please FAX to 207-624-3401 or send by mail to: Maine Dept. of Transportation,
Civil Rights Office,
Holly Anderson, #16 State House Station, Augusta, ME 04333-0016



MaineDOT

A CONTRACTOR'S GUIDE TO DAVIS-BACON

PREVAILING WAGE REQUIREMENTS FOR FEDERALLY-ASSISTED PROJECTS

Maine Department of Transportation
Civil Rights Office
#16 State House Station
Augusta, Maine 04333-0016

Office: (207) 624-3657 Fax: (207) 624-3401 Cell: (207) 592-1670

INTRODUCTION

The purpose of this Guide is to explain in simple and non-bureaucratic terms exactly what is required of contractors and subcontractors working on construction projects covered by Federal Davis-Bacon prevailing wage and reporting requirements. The Maine Department of Transportation is providing this Guide as a service to assist you in better understanding your labor standards and compliance responsibilities.

There are three chapters in this Guide. The first chapter provides a brief description of the laws and regulations associated with Federal labor standards administration and enforcement and discusses both what's in your contract that requires Davis-Bacon compliance as well as your responsibilities. The second chapter deals with labor standards and payroll reporting requirements. The third chapter discusses what can happen in the event there is a dispute about the wage rates that should be (or have been) paid and any back wages that may be due.

This Guide is focused primarily on the requirements and responsibilities associated with MaineDOT Federal-aid construction projects subject to Davis-Bacon wage rates, but the guidance is also generally applicable to Davis-Bacon covered projects administered by other State/Federal agencies.

Not all MaineDOT construction projects are covered by Davis-Bacon wage rates. For the purpose of this Guide, we shall assume that a determination has already been made that Davis-Bacon wage rates are applicable.



Look for these boxes throughout this Guide for time saving tips, cross references, and other helpful information.

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References:

HUD-Guide to Davis-Bacon

USDOL-Prevailing Wage Resource Manual/Davis-Bacon

FHWA-Labor Compliance Manual/1979

**FHWA-1273 Required Contract Provisions, Federal-Aid Construction
Contracts**

CHAPTER 1. LAWS, REGULATIONS, CONTRACTS AND RESPONSIBILITIES

The following paragraphs describe what the labor standards laws and regulations actually say and what it means to you on MAINEDOT projects:

1-1 DAVIS-BACON AND OTHER LABOR LAWS.

a. **The Davis-Bacon Act (DBA).** The Davis-Bacon Act requires the payment of prevailing wage rates (which are determined by the U.S. Department of Labor) to all laborers and mechanics on Federal construction projects in excess of \$2,000. Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works.

b. **The Contract Work Hours and Safety Standards Act (CWHSSA).** CWHSSA requires time and one-half pay for overtime (O/T) hours (over 40 in any workweek) worked on the covered project. The CWHSSA applies to both direct Federal contracts and to indirect Federally-assisted contracts *except* where the assistance is solely in the nature of a loan guarantee or insurance. CWHSSA violations carry a liquidated damages penalty (\$10/day per violation). Intentional violations of CWHSSA standards are considered a Federal criminal misdemeanor.

c. **The Copeland Act (Anti-Kickback Act).** The Copeland Act makes it a crime for anyone to require any laborer or mechanic (employed on a Federal or Federally-assisted project) to *kickback* any part of their wages. The Copeland Act also requires every employer (contractors and subcontractors) to submit weekly certified payroll reports (CPRs).

d. **The Fair Labor Standards Act (FLSA).** The FLSA contains Federal minimum wage rates and overtime (O/T) requirements. These requirements generally apply to any labor performed and may be *pre-empted* by other Federal standards such as the DBRA prevailing wage requirements and CWHSSA O/T provisions. Only the DOL has the authority to administer and enforce FLSA. MAINEDOT will refer to the DOL any possible FLSA violations that are found on MAINEDOT projects.

1-2 **DAVIS-BACON REGULATIONS.** The Department of Labor has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR). These regulations can be found in *Title 29 CFR Parts 1, 3, 5, 6 and 7*. *Part 1* explains how the DOL establishes and publishes DBA wage determinations and provides instructions on how to use the determinations. *Part 3* describes Copeland Act requirements for payroll deductions and the submission of weekly certified payroll reports. *Part 5* covers the labor standards provisions that are in your contract relating to Davis-Bacon Act wage rates and the responsibilities of contractors and contracting agencies to administer and enforce the provisions. *Part 6* provides for administrative proceedings enforcing Federal labor standards on construction and service contracts. Last, *Part 7* sets parameters for practice before the Wage Appeals Board

(renamed Administrative Review Board). These regulations are used as the basis for administering and enforcing the laws.

☺ *DOL Regulations are available on-line on the World Wide Web:*
http://www.dol.gov/dol/allcfr/title_29/toc.htm

1-3 **CONSTRUCTION CONTRACT PROVISIONS.** Each contract subject to Federal (Davis-Bacon) labor standards requirements must contain contract provisions containing labor standards clauses and a Davis-Bacon wage decision. These documents are normally bound into the contract specifications.

a. **The labor standards clauses.** The labor standards clauses describe the responsibilities of the contractor concerning Davis-Bacon wages and obligate the contractor to comply with the labor requirements. The labor standards clauses also provide for remedies in the event of violations, including withholding from payments due to the contractor to ensure the payment of wages or liquidated damages which may be found due. These contract clauses enable the contract administrator to enforce the Federal labor standards applicable to the project. MAINEDOT has standard forms that contain contract clauses. One example is the FHWA 1273-Required Contract Provisions Federal-Aid Construction Projects.

b. **Davis-Bacon Wage Decisions.** The Davis-Bacon wage decision is a listing of various construction work classifications such as Carpenter, Plumber, Equipment operators and Electrician, for example, and the minimum wage rates (and fringe benefits, where prevailing) that people performing work in those classifications must be paid.

All current Davis-Bacon wage decisions can be accessed on-line at:

<http://www.wdol.gov>

Should your contract contain a Special Provision to use State of Maine wage decisions, these can be accessed on line at:

http://www.maine.gov/labor/labor_stats/publications/wagerateconst/index.html

1-4 **RESPONSIBILITY OF THE PRINCIPLE CONTRACTOR.** The principal contractor (also referred to as the *prime or general contractor*) is responsible for the full compliance of all employers (the contractor, subcontractors and any lower-tier subcontractors) with the labor standards provisions applicable to the project. Because of the contractual relationship between a prime contractor and his/her subcontractors, questions to, or from, or about subcontractors should always be channeled through the prime contractor.

☺ To make this Guide easier to understand, the term "**prime contractor**" will mean the principal contractor; "**subcontractor**" will mean all subcontractors including lower-tier subcontractors; and the term "**employer**" will mean all contractors as a group, including the prime contractor and any subcontractors and lower-tier subcontractors.

1-5 **RESPONSIBILITY OF THE CONTRACT ADMINISTRATOR.** The **contract administrator**(s) is responsible for the proper administration and enforcement of the Federal labor standards provisions on contracts covered by Davis-Bacon requirements. We use this term to represent the person (or persons) who will provide labor standards preconstruction advice and support to you and other project principals (for example, the owner, sponsor, architect), including providing the proper Davis-Bacon wage decision (see paragraph 2-1, ***The Wage Decision***) and ensuring that the wage decision and contract clauses are incorporated into the contract for construction. The contract administrator also monitors labor standards compliance (see paragraph 2-6, ***Compliance Reviews***) by conducting interviews with construction workers at the job site and reviewing payroll reports, and oversees any enforcement actions that may be required.

The contract administrator could be an employee of MaineDOT or other representative. Some Construction projects are Local Administered Projects that are administered by a representative of a city or town.

The DOL also has a role in monitoring Davis-Bacon administration and enforcement. A DOL investigator or other DOL representative may visit Davis-Bacon construction sites to interview construction workers or review payroll information.

☺ All communications to or from the prime contractor concerning the labor standards applicable to a particular contract, or concerning compliance with those standards should go through the contract administrator or the Department of Transportation's Labor Compliance Officer.

CHAPTER 2. HOW TO COMPLY WITH LABOR STANDARDS AND PAYROLL REPORTING REQUIREMENTS

WHERE TO START? Now that you know you're on a Davis-Bacon project and you know some of the legal and practical implications, what's next?

SECTION I THE BASICS

2-1 **THE WAGE DECISION.** Davis-Bacon labor standards stipulate the wage payment requirements for *Equipment operators, Carpenters, Electricians, Plumbers, Laborers, and other construction work classifications* that may be needed for the project. The ***Davis-Bacon wage decision*** that applies to the project contains a schedule of work classifications and wage rates

that must be followed. If you don't have it already (and by now you should), you'll want to get a copy of the applicable ***Davis-Bacon wage decision***.



Remember, the wage decision is contained in the contract specifications along with the labor standards clauses. See ¶1-3, *Construction Contract Provisions*.

a. **The work classifications and wage rates.** A Davis-Bacon wage decision is simply a listing of different work classifications and the minimum wage rates that must be paid to anyone performing work in those classifications. You'll want to make sure that the work classification(s) you need are contained in the wage decision and make certain you know exactly what wage rate(s) you will need to pay. Some wage decisions cover several counties and/or types of construction work (for example, residential and commercial work) and can be lengthy and difficult to read. Contact the *contract administrator* (MaineDOT Civil Rights Office, Resident Engineer or local agency staff) if you have any trouble reading the wage decision or finding the work classification(s) you need.

b. **Posting the wage decision.** If you are the prime contractor, you will be responsible for posting a copy of the wage decision (or the Project Wage Rate Sheet) and a copy of a DOL poster called *Notice to Employees* at the job site in a place that is easily accessible to all of the construction workers employed at the project and where the wage decision and poster won't be destroyed by wind or rain, etc. The *Notice to Employees* poster is also available with Spanish text.

2-2 ADDITIONAL CLASSIFICATIONS AND WAGE RATES. What if the work classification you need isn't on the wage decision? If the work classification(s) that you need doesn't appear on the wage decision, you will need to request an ***additional classification and wage rate***. This process is usually very simple and you'll want to start the request right away. Basically, you identify the classification you need and recommend a wage rate for DOL to approve for the project. There are a few rules about additional classifications; you'll find these rules in the DOL regulations, Part 5, and in the labor clauses in your contract. The rules are summarized for you here:

a. **Additional classification rules.** Additional classifications and wage rates can be approved if:

- 1) The requested classification is used by construction contractors in the area of the project. (The area is usually defined as the *county* where the project is located).
- 2) The work that will be performed by the requested classification is not already performed by another classification that is already on the wage decision. (In other

words, if there already is a Roller operator classification and wage rate on the wage decision you can't request an Earth Roller operator classification and rate.)

3) The proposed wage rate for the requested classification "fits" with the other wage rates already on the wage decision. (For example, the wage rate proposed for a trade classification such as Grader operator must be at least as much as the lowest wage rate for other trade classifications already contained in the wage decision.) And,

4) The workers that will be employed in the added classification (if it is known who the workers are/will be), or the workers' representatives, must agree with the proposed wage rate.

b. **Making the request.** A request for additional classification and wage rate must be made in writing through Maine Dot's Civil Rights Office (If the contract administrator is a local agency, the agency will send the request to the MaineDOT.) If you are a subcontractor, your request should also go through the prime contractor. All you need to do is identify the work classification that is missing and recommend a wage rate (usually the rate that employer is already paying to the employees performing the work) for that classification. You may also need to describe the work that the new classification will perform.

c. **MAINEDOT review.** The MaineDOT Civil Rights Office will review the requested classification and wage rate to determine whether the request meets the DOL rules outlined in paragraph 2-2(a), above. If additional information or clarification is needed, the staff will contact the prime contractor (or contract administrator for local agency projects) for more information, etc. If the Labor Compliance Officer review finds that the request meets the rules, MAINEDOT will give preliminary approval on the request and refer it to the DOL for final approval.

If the MaineDOT Civil Rights Office doesn't think the request meets the rules and if agreement can't be reached on the proper classification or wage rate for the work described, the MaineDOT Civil Rights will *not* approve the request. In this case, the staff will send your request to the DOL with an explanation why MaineDOT believes that the request shouldn't be approved. The DOL still has final decision authority. You will receive a copy of the disapproval/referral letter to the DOL.

d. **DOL decision.** The DOL will respond to MaineDOT Civil Rights Office in writing about the additional classification and wage rate request. MaineDOT Civil Rights Office will notify you of the DOL decision in writing. If the DOL approves the request, the prime contractor must post the approval notice on the job site with the wage decision.

If the DOL *does not* approve the request, you will be notified about what classification and wage rate should be used for the work in question. You will also receive instructions about how to ask for DOL reconsideration if you still want to try to get your recommendation approved.



It's always a good idea to talk to the contract administrator or Civil Rights Office before submitting an additional classification and wage rate request. The contract administrator or Civil Rights Office can offer suggestions and advice that may save you time and increase the likelihood that DOL will approve your request. Usually, the contract administrator or Civil Rights Office can give you an idea about what the DOL will finally decide.

2-3 **CERTIFIED PAYROLL REPORTS.** You'll need to submit a weekly certified payroll report beginning with the first week that your company works on the project and for every week afterward until your firm has completed its work. It's always a good idea to number the payroll reports beginning with #1 and to clearly mark your last payroll for the project "Final."

a. **Payroll formats.** The easiest form to use is DOL's WH-347, *Payroll*. A sample copy of the WH-347 is included in the back of this Guide. You can also find the form on-line at:

<http://www.dol.gov/esa/programs/dbra/forms.htm>



You are *not required* to use Payroll Form WH-347. You are welcome to use any other type of payroll, such as computerized formats, as long as it contains all of the information that is required on the WH-347.

b. **Payroll certifications.** The weekly payrolls are called *certified* because each payroll is signed and contains language certifying that the information is true and correct. The payroll *certification* language is on the reverse side of the WH-347. If you are using another type of payroll format you may attach the certification from the back of the WH-347 or any other format which contains the same certification language on the WH-347 (reverse).

c. **"No work" payrolls.** "No work" payrolls may be submitted whenever there is a temporary break in your work on the project. (*See Tip Box, below, for "no work" payroll exemption!*) For example, if your firm is not needed on the project right now but you will be returning to the job in a couple of weeks. However, if you know that your firm will not be working on the project for an extended period of time, you may wish to send a short note to the contract administrator to let them know about the break in work and to give an approximate date when your firm will return to the project. If you send a note, you *do not* need to send "no work" payrolls.



If you number your payroll reports consecutively, you *do not* need to submit "no work" payrolls!

d. **Payroll review and submission.** The prime contractor should **review** each subcontractor's payroll reports for compliance *prior* to submitting the reports to the contract administrator. Remember, the prime contractor is responsible for the full compliance of all subcontractors on the contract and will be held accountable for any wage restitution that may be found due to any laborer or mechanic that is underpaid *and* for any liquidated damages that may be assessed for overtime violations. All of the payroll reports for any project must be submitted to the contract administrator *through* the prime contractor.

☺ An alert prime contractor that reviews subcontractor payroll submissions can detect any misunderstandings early, prevent costly underpayments and protect itself from financial loss should underpayments occur.

e. **Payroll retention.** Every contractor (including every subcontractor) must keep a complete set of their own payrolls and other basic records such as time cards, for a Davis-Bacon project for at least 3 years after the project is completed. The prime contractor must keep a complete set of all of the payrolls for every contractor (including subcontractors) for at least 3 years after completion of the project.

f. **Payroll inspection.** In addition to submitting payrolls to the contract administrator, every contractor (including subcontractors) must make their *own* copy of the payrolls available for review or copying to any authorized representative from FHWA, MaineDOT or from DOL.

2-4 **DAVIS-BACON DEFINITIONS.** Before we discuss how to complete the weekly payroll forms, we need to review a couple of definitions. These definitions can help you understand what will be required of you:

a. **Laborer or mechanic.** "Laborers" and "mechanics" mean anyone who is performing construction work on the project, including trade journeymen (carpenters, plumbers, equipment operators, etc.), apprentices, and trainees and, for CWHSSA purposes, watchmen and guards. "Laborers" and "mechanics" are the two groups of workers that must be paid not less than Davis-Bacon wage rates.

1) **Working foremen.** Foremen or supervisors that regularly spend **more** than 20% of their time performing construction work are covered "laborers" and "mechanics" for labor standards purposes.

2) **Exclusions.** People whose duties are primarily administrative, managerial or clerical are not laborers or mechanics. For example, office staff, timekeepers, messengers, etc. (Contact the Labor Compliance Officer if you have any questions about whether a particular employee is excluded.)

b. **Employee.** Every person who performs the work of a laborer or mechanic is "employed" regardless of any contractual relationship which may be alleged to exist

between a contractor or subcontractor and such person. This means that even if there is a contract between a contractor and a worker, the contractor must make sure that the worker is paid at least as much as the wage rate on the wage decision for the classification of work they perform.

c. **Apprentices and trainees.** The only workers who can be paid less than the wage rate on the wage decision for their work classification are "apprentices" and "trainees" registered in approved apprenticeship or training programs, including *Step-Up* apprenticeship programs designed for Davis-Bacon construction work. Approved programs are those which have been registered with the DOL, Bureau of Apprenticeship and Training (BAT), with a BAT-recognized State Apprenticeship Agency (SAC) or may be part of the On the Job Training program administered by MaineDOT. Apprentices and trainees are paid wage rates in accordance with the wage schedule in the approved program.

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Most often, the apprentice/trainee wage rate is expressed as a series of percentages tied to the amount of time spent in the program. For example, 0-6 months: 65%; 6 months - 1 year: 70%; etc. The percentage is applied to the journeyman's wage rate. On Davis-Bacon projects, the percentage must be applied to the journeyman's wage rate *on the applicable wage decision* for that craft.

1) **Probationary apprentice.** A "probationary apprentice" can be paid as an apprentice (less than the rate on the wage decision) if the BAT or SAC has certified that the person is eligible for probationary employment as an apprentice.

2) **Pre-apprentice.** A "pre-apprentice", that is, someone who is not registered in a program and that hasn't been BAT- or SAC-certified for probationary apprenticeship is *not* considered to be an "apprentice" and must be paid the full journeyman's rate on the wage decision for the classification of work they perform.

3) **Ratio of apprentices and trainees to journeymen.** The maximum number of apprentices or trainees that you can use on the job site can not be more than the ratio of apprentices or trainees to journeymen allowed in the approved program.

d. **Prevailing wages or wage rates.** Prevailing wage rates are the wage rates listed on the wage decision for the project. The wage decision will list a minimum basic hourly rate of pay for each work classification. Some wage decisions include fringe benefits which are usually listed as an hourly fringe rate. If the wage decision includes a fringe benefit rate for a classification, you will need to add the fringe benefit rate to the basic hourly rate *unless* you provide bona fide fringe benefits for your employees.

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Note that the *total* hourly wage rate paid to any laborer or mechanic (basic wage *or* basic wage plus fringe benefits) may be no less than the total wage rate (basic wage *or* basic wage plus fringe benefits) on the wage decision for their craft. If the value of the fringe benefit(s) you provide is less than the fringe benefit rate on the wage decision, you will need to add the balance of the wage decision fringe benefit rate to the basic rate paid to the employee. For example, if the wage decision requires \$10/hour basic rate plus \$5/hour fringe benefits, you must pay no less than that total (\$15/hour) in the basic rate *or* basic rate plus whatever fringe benefit you may provide.

e. **Fringe benefits** include health insurance, retirement, life insurance, vacation and some contributions to training funds. Fringe benefits ***do not*** include employer payments or contributions required by other Federal, State or local laws, such as the employer's contribution to Social Security or some disability insurance payments.

f. **Site of work.** The "site of work" is where the Davis-Bacon wage rates apply. Usually, this means the boundaries of the project. "Site of work" can also include other adjacent or nearby property used by a contractor or subcontractor in the construction of the project, like a fabrication site.

g. **Overtime.** Overtime hours are defined as all hours worked on the site of the work in excess of 40 hours in any work week. Overtime hours must be paid at no less than one and one-half times the regular rate of basic pay plus the straight-time rate of any required fringe benefits.

h. **Deductions.** You may make payroll deductions as permitted by DOL Regulations 29 CFR Part 3. These regulations prohibit the employer from requiring employees to "kick-back" any of their earnings. Allowable deductions include employee obligations for income taxes, Social Security payments, insurance premiums, retirement, savings accounts, and any other legally-permissible deduction authorized by the employee. Deductions may also be made for payments on judgments and other financial obligations legally imposed against the employee.

i. **Proper designation of trade.** You must select a work classification on the wage decision for each worker based on the actual type of work he/she performed and you must pay each worker no less than the wage rate on the wage decision for that classification regardless of their level of skill. In other words, if someone is performing carpentry work on the project, they must be paid no less than the wage rate on the wage decision for Carpenters *even* if they aren't considered by you to be fully trained as a Carpenter. If an employee performs the work of different classifications, they must be paid accordingly (see split classifications below). If an employee is working on items that are incidental to the contract, they must be classified and paid with the appropriate classification and wage rate. ***Remember***, the only people who can be paid less than the rate for their craft is apprentices and trainees registered in approved programs.

1) **Split-classification.** If you have employees that perform work in more than one classification, you can pay the wage rates specified for each classification *only* if you maintain accurate time records showing the amount of time spent in each classification of work. If you do not maintain accurate time records, you must pay these employees the *highest* wage rate of all of the classifications of work performed.

SECTION II **REPORTING REQUIREMENTS**

2-5 **COMPLETING A PAYROLL REPORT.** What information has to be reported on the payroll form? The weekly payroll form doesn't ask for any information that you don't already need to keep for wage payment and tax purposes. For example, you need to know each employee's *name*, *address* and *social security number*; his or her *work classification* (who is working for you and what do they do?), the *hours worked* during the week, his or her *rate of pay*, the *gross amount earned* (how much did they earn?), the amounts of any *deductions* for taxes, etc., and the *net amount paid* (how much should the paycheck be made out for?). No more information than you need to know in order to manage your work crew and make certain they are paid properly. And, certainly, no more information than you need to keep for IRS, Social Security and other tax and employment purposes.

☺ **FOR MOST CONTRACTORS, THE WEEKLY CERTIFIED PAYROLL IS ALL THE PAPERWORK THAT IS REQUIRED FOR A DAVIS-BACON PROJECT!**

a. **Project and contractor/subcontractor information.** Each payroll should show the contractor or subcontractor's name and address, the project name and number, and the week ending date. Indicate the *dates* in the spaces provided. Numbering payrolls is optional but strongly recommended.

b. **Employee information.** The first payroll on which each employee appears must contain the employee's name, address and Social Security Number. Afterward, the address and Social Security Number only need to be reported if there is a change in this information.

c. **Work Classification.** Each employee must be classified in accordance with the wage decision based on the type of work they actually perform.

1) **Apprentices or Trainees.** The first payroll on which any apprentice or trainee appears must be accompanied by a copy of that apprentice's or trainee's registration in an approved program. A copy of the portions of the approved program pertaining to the wage rates and ratios shall also accompany the first CPR on which the first apprentice or trainee appears.

2) **Split classifications.** For employees in split classifications, list the employees once for each classification, distributing the hours of work accordingly, and

reflecting the rate of pay and gross earnings for each classification. Deductions and net pay may be based upon the total gross amount earned for all classifications.

d. **Hours Worked.** The payroll should show **ONLY** the regular and overtime hours worked on this project. Show both the daily and total weekly hours for each employee. If an employee performs work at job sites other than the project for which the payroll is prepared, those "other job" hours *should not* be reported on the payroll. In these cases, you should list the employee's name, classification, hours for this project only, the rate of pay and gross earnings for this project, and the gross earned for *all projects*. Deductions and net pay may be based upon the employee's total earnings (for all projects) for the week.

e. **Rate of Pay.** Show the basic hourly rate of pay for each employee for this project. If the wage decision includes a fringe benefit and you ***do not*** participate in approved fringe benefit programs, ***add*** the fringe benefit rate to the basic hourly rate of pay. Also list the overtime rate if overtime hours were worked.

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Remember, the overtime rate is computed at one and one-half times the *basic* rate of pay plus any fringe benefits. For example, if the wage decision requires \$10/hour basic plus \$5/hour fringe benefits, the overtime rate would be: $(\$10 \times 1\frac{1}{2}) + \$5 = \$20/\text{hour}$.

f. **Gross Wages Earned.** Show the gross amount of wages earned for work performed on this project. *Note:* For employees with work hours and earnings on other projects, you may show gross wages for this project over gross earnings all projects (for example, \$425.40/\$764.85) and base deductions and net pay on the "all projects" earnings.

g. **Deductions.** Show the amounts of any deductions from the gross earnings. "Other" deductions should be identified (for example, Savings Account or Loan Repayment). Any voluntary deduction (that is, not required by law or by an order of a proper authority) must be authorized in writing by the employee. A short note signed by the employee is all that is needed and should accompany the first payroll on which the other deduction appears.

⌚ Only one employee authorization is needed for recurring (e.g., weekly) other deductions. 😊 Written employee authorization is not required for income tax and Social Security deductions.

h. **Net Pay.** Show the net amount of wages paid.

i. **Statement of Compliance.** The Statement of Compliance is the certification. It is located on the reverse side of a standard payroll form (WH-347) or on form WH-348. Be sure to complete the identifying information at the top, particularly if you are attaching the Statement of Compliance to an alternate payroll form such as a computer payroll. Also, you must check either 4(a) or 4(b) if the wage decision contains a fringe benefit. Checking 4(a) indicates that you are paying required fringe benefits to approved plans or programs; and 4(b) indicates that you are paying any required fringe benefit amounts directly to the employee by adding the fringe benefit rate to the basic hourly rate of pay. If you are paying a portion of the required fringe benefit to programs and the balance directly to the employee, explain those differences in box 4(c).

j. **Fringe Benefit Statement.** If the wage determination decision contains a fringe benefit, a MaineDOT Fringe Benefit Statement must be submitted with the first Certified Payroll and updated throughout the course of the project, if changes occur.

k. **Signature.** Make sure the payroll is **signed** with an original signature. The payroll must be signed by a principal of the firm (owner or officer such as the President, Treasurer or Payroll Administrator) or by an authorized agent (a person authorized by a principal in writing to sign the payroll reports). Signature authorization (for persons other than a principal) should be submitted with the first payroll signed by such an agent.

😊 Only one Statement of Compliance is required for each employer's weekly payroll no matter how many pages are needed to report the employee data.

SECTION III PAYROLL REVIEWS AND CORRECTIONS

2-6 **COMPLIANCE REVIEWS.** The contract administrator, Resident Engineer, Labor Compliance Officer or other inspector may visit the project site and interview some of the workers concerning their employment on the project. In addition, the contract administrator will periodically review payrolls and related submissions, comparing the interview information to the payrolls, to ensure that the labor standards requirements have been met. You will be notified by the contract administrator if these reviews find any discrepancies or errors. You will be given instructions about what steps must be taken to correct any problems.

a. **On-site Interviews.** Every employer (contractor, subcontractor, etc.) must make their employees available for interview at the job site with the contract administrator or other

agency representative, or DOL representative. The interviews are confidential and the employee will be asked about the kind of work they perform and their rate of pay. Every effort will be made to ensure that these interviews cause as little disruption as possible to the on-going work.

b. **Project payroll reviews.** The contract administrator will compare the information on the interview forms to the corresponding payrolls to ensure that the workers are properly listed on the payrolls for the days, work classification and rate of pay. The contract administrator will also review the payroll submissions to make certain that the payrolls are complete and signed; that employees are paid no less than the wage rate for the work classification shown; apprentice and trainee certifications are submitted (where needed); employee authorizations for other deductions are submitted (where needed); etc.

2-7 **TYPICAL PAYROLL ERRORS AND REQUIRED CORRECTIONS.** The following paragraphs describe common payroll errors and the corrective steps you must take.

a. **Inadequate payroll information.** If the alternate payroll (such as a computer payroll) does not contain all of the information that would be on the optional form WH-347, the employer will be asked to resubmit the payrolls on an acceptable form.

b. **Missing addresses and Social Security Numbers.** If the first payroll on which an employee appears does not contain the employee's address and Social Security Number, the employer will be asked to supply the missing information. A short note providing the information is all that is needed.

c. **Incomplete payrolls.** If the information on the payroll is not complete, for example, if work classifications or rates of pay are missing, the employer will be asked to send a corrected payroll.

d. **Classifications.** If the payrolls show work classifications that do not appear on the wage decision, the employer will be asked to reclassify the employees in accordance with the wage decision *or* the employer may request an ***additional classification and wage rate*** (See *paragraph 2-2*). If reclassification results in underpayment (the wage rate paid on the payroll is less than the rate required for the new classification, the employer will be asked to pay ***wage restitution*** to all affected reclassified employees. (See *paragraph 2-8 for instructions about wage restitution.*)

e. **Wage Rates.** If the wage rates on the payroll are less than the wage rates on the wage decision for the work classification reported, the employer will be asked to pay wage restitution to all affected employees. After payment has been made, certified payrolls showing the payments made as restitution shall be submitted by the employer with a copy of cashed/cancelled checks as evidence that the restitution has been made.

f. **Apprentices and trainees.** If a copy of the employee(s) registration or approved program ratio and wage schedule is not submitted with the first payroll on which an apprentice or trainee appears, the employer will be asked to submit a copy of each

apprentice's or trainee's registration and/or the approved program ratio and wage schedule. If the ratio of apprentices or trainees to journeymen on the payroll is greater than the ratio in the approved program, the employer will be asked to pay wage restitution to any excess apprentices or trainees. Also, any apprentice or trainee that is *not* registered in an approved program must receive the journeyman's wage rate for the classification of work they performed. Remember, the ratio of apprentices to journeymen is outlined in the approved program.

g. **Overtime.** If the employees did not receive at least time and one-half for any overtime hours worked on the project, the following will occur:

1) If the project is subject to *CWHSSA overtime* requirements, the employer will be asked to pay wage restitution for all overtime hours worked on the project (overtime hours worked at other projects are not subject to CWHSSA). The employer may also be liable to the United States for liquidated damages computed at \$10 per day per violation. Or,

2) If the project is *not* subject to CWHSSA, the employer will be notified of the possible *FLSA overtime* violations. Also, the Labor Relations staff may refer the violations to the DOL for further review.

h. **Computations.** If the payroll computations (hours worked times rate of pay) or extensions (deductions, net pay) show frequent errors, the employer will be asked to take greater care. Wage restitution may be required if underpayments resulted from the errors.

i. **Deductions.** If there are any "Other" deductions that are not identified, or if employee authorization isn't provided, or if there is any unusual (very high, or large number) deduction activity, the employer will be asked to identify the deductions, provide employee authorization or explain unusual deductions, as necessary.

j. **Fringe benefits.** If the wage decision contains fringe benefits but the payroll does not indicate how fringe benefits were paid [neither 4(a) nor 4(b) is marked on the payroll form], the employer may be asked to submit corrected payrolls *and* will be required to pay wage restitution if underpayments occurred. *However*, if the basic hourly rates for the employees are at least as much as the total wage rate on the wage decision (basic hourly rate *plus* the fringe benefit rate), no correction is necessary. If an hourly fringe benefit is not listed on the payroll, a list breaking down the hourly fringe benefit of each employee must be provided.

k. **Signature.** If the payroll *Statement of Compliance* is not signed or is missing, the employer will be asked to submit a signed Statement of Compliance for each payroll affected.

l. **On-site interview comparisons.** If the comparison of on-site interviews to the payrolls indicates any discrepancies (for example, the employee does not appear on the payroll for the date of the interview), the employer will be asked to submit a corrected payroll report.

2-8 **RESTITUTION FOR UNDERPAYMENT OF WAGES.** Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions.

a. **Notification to the prime contractor.** The contract administrator will notify the prime contractor in writing of any underpayments that are found during payroll or other reviews. The notice will describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The prime contractor is allowed 30 days to correct the underpayments. Note that the prime contractor is responsible to the contract administrator for ensuring that restitution is paid. If the employer is a subcontractor, the subcontractor will usually make the computations and restitution payments and furnish the required documentation through the prime contractor.

b. **Computing wage restitution.** Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage decision for all hours worked where underpayments occurred. The difference in the wage rates is called the *adjustment rate*. The adjustment rate times the number of hours involved equals the gross amount of restitution due.

c. **Correction payrolls.** The employer will be required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (for example, Payrolls #1 through #6; or a beginning date and ending date). The correction payroll will list each employee to whom restitution is due and their work classification; the total number of work hours involved (daily hours are usually not applicable for restitution); the adjustment wage rate (the difference between the required wage rate and the wage rate paid); the gross amount of restitution due; deductions and the net amount to be paid. A signed Statement of Compliance must be attached to the correction CPR. Additionally, a MaineDOT Employee Pay Restitution Worksheet must be completed for each employee owed restitution. You must attach a copy of the canceled check to the Restitution Worksheet.

e. **Review of correction CPR.** The contractor administrator will review the correction payroll to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed, documented on a supplemental correction payroll within 30 days.

f. **Unfound workers.** Sometimes, wage restitution can not be paid to an affected employee because, for example, the employee has moved and can't be located.

In these cases, at the end of the project the prime contractor will be required to place in a deposit or escrow account an amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. The MaineDOT Civil Rights

Office will continue to attempt to locate the unfound workers for 3 years after the completion of the project.

CHAPTER 3. LABOR STANDARDS DISPUTES, ADMINISTRATIVE REVIEWS, WITHHOLDING AND DEPOSITS AND ESCROW ACCOUNTS

WHAT HAPPENS WHEN THINGS GO WRONG?

3-1 **INTRODUCTION.** Even in the best of circumstances, things can go wrong. In a Davis-Bacon context, "things going wrong" usually means there's a difference of opinion - a dispute - about whether and to what extent underpayments have occurred. These disputes are usually between the contract administrator and one or more employers (the prime contractor and/or a subcontractor). The dispute may involve something simple such as an additional classification request that is pending before the DOL; or something as significant as investigative findings following a complaint of underpayment. This chapter discusses some of what you may expect and what you can do to make your views known and to lessen any delays.

3-2 **ADMINISTRATIVE REVIEW ON LABOR STANDARDS DISPUTES.** As mentioned in the Introduction, above, a dispute about labor standards and compliance can arise for a number of reasons. The labor standards clauses in your contract and DOL regulations provide for administrative review of issues where there is a difference of views between the contract administrator and any employer. The most common circumstances include:

a. **Additional classifications and wage rates.** Additional classification and wage rate requests are sometimes denied by the DOL. An employer that is dissatisfied with the denial can request reconsideration by the DOL Wage and Hour Administrator. The employer may continue to pay the wage rate, as requested, until a final decision is rendered on the matter. When the final decision is known, the employer will be required to pay any additional wages that may be necessary to satisfy the wage rate that is established.

1) **Reconsideration.** . The DOL normally identifies the reasons for denial in its response to the request. Any interested person (*for example*, the contract administrator, employer, representatives of the employees) may request reconsideration on the decision on the additional classification request. The request for reconsideration should be made in writing and should thoroughly address the denial reasons identified by the DOL. Requests for reconsideration should be made through the contract administrator. (*See ¶2-2(d), and also DOL Regulations 29 CFR 1.8.*)

2) **Administrative Review Board.** Any interested party may request a review of the Administrator's decision on reconsideration by the ***Administrative Review Board*** (*formerly, Wage Appeals Board*). DOL regulations 29 CFR Part 7 explain the procedures for such reviews. (*See also 29 CFR 1.9.*)

b. **Findings of underpayment.** Compliance reviews and other investigations may result in findings of underpayment. The primary goal in every case and at every step in this process is to reach agreements about who may have been underpaid and how much wage restitution may be due and, of course, to deliver restitution to any underpaid workers. The contract administrator will usually work informally with you to reach such agreements. You will have an opportunity to provide additional information to the contract administrator that may explain apparent inconsistencies and/or resolve the discrepancies.

If informal exchanges do not result in agreement, the final determination and schedule of wages due will be presented to you in writing and you will be permitted 30 days in which to correct the underpayment(s) *or* to request a hearing on the matter before the DOL. The request for hearing should be made in writing and should explain what findings are in dispute and the reasons. The request should be made through the contract administrator. The contract administrator will submit a report of the findings and the hearing request to the DOL for review and further consideration.

1) **DOL review.** The DOL will review the contract administrator's report and the arguments against the findings presented in the hearing request. The DOL may affirm or modify the findings based upon the materials presented. You will be notified in writing by the DOL of the results of its review; you will be given an opportunity to correct any underpayments *or* to continue with the hearing request. (*See DOL Regulations 29 CFR 5.11 (b) and 29 CFR Part 6, Rules of Practice for Administrative Proceedings....*)

2) **Administrative Review Board.** Contractors and/or subcontractors may request a review by the Administrative Review Board of the decision(s) rendered by the DOL in the administrative hearing process. See DOL regulations 29 CFR Part 7 for more information about this proceeding.

3-3 **WITHHOLDING.** The contract administrator may cause withholding from payments due to the prime contractor to ensure the payment of wages which are believed to be due and unpaid, for example, if wage underpayments or other violations are not corrected within 30 days after notification to the prime contractor. Withholding is considered to be serious and is not taken unless warranted. Very often, the amount kept in retention is sufficient to cover any back wage liability so withholding from payments is not considered necessary. However, if withholding is deemed necessary, you will be notified in writing. Only the amounts necessary to meet the contractor's (and/or subcontractor's) liability shall be withheld.

*
• Remember, the prime contractor is responsible and will be held liable for any wage restitution that is due to any worker employed in the construction of the project, including workers employed by subcontractors and any lower-tier subcontractors. *See ¶1-4, Responsibility of the Principal Contractor, and ¶2-8(a), Restitution for underpayment of wages.*

3-4 **DEPOSITS AND ESCROWS.** In every case, we attempt to complete compliance actions and resolve any disputes before the project is completed and final payments are made. Sometimes, corrective actions or disputes continue after completion and provisions must be made to ensure that funds are available to pay any wage restitution that is ultimately found due. In these cases, we allow the project to proceed to final closings and payments *provided* the prime contractor deposits an amount equal to the potential liability for wage restitution and liquidated damages, if necessary, in a special account. The deposit or *escrow account* is controlled by the contract administrator. When a final decision is rendered, the contract administrator makes disbursements from the account in accordance with the decision. Deposit/escrow accounts are established for one or more of the following reasons:

a. Where the parties have agreed to amounts of wage restitution that are due *but* the employer hasn't furnished evidence yet that all of the underpaid workers have received their back wages. The deposit is equal to the amount of restitution due to workers lacking payment evidence. As proper documentation is received, an amount corresponding to the documentation is returned to the depositor. Amounts for any workers who can not be located are held in the escrow account for three years and disbursed as described in ¶2-8(f) of this Guide.

b. Where underpayments are suspected or alleged and an investigation has not yet been completed. The deposit is equal to the amount of wage restitution and any liquidated damages, if applicable, that is estimated to be due. If the final determination of wages due is less than the amount estimated and placed in the escrow account, the escrow will be reduced to the final amount and the difference will be returned to the depositor. If the parties agree to the investigative findings, the amounts due to the workers will be disbursed from the escrow account in accordance with the schedule of wages due. Amounts for unfound workers will be retained as described above (*See ¶2-8(f) and 3-4(a)*).

If the parties *do not* agree and an administrative hearing is requested, the escrow will be maintained as explained in ¶3-4(c), below.

c. Where the parties are waiting for the outcome of an administrative hearing that has been or will be filed contesting a final determination of wages due. The deposit shall be equal to the amount of wage restitution and liquidated damages, if applicable, that have been determined due. Once a final decision is rendered, disbursements from the escrow account are made in accordance with the decision.

3-5 **DEBARMENT.** Contractors and/or subcontractors that are found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of the Davis-Bacon and Related Acts (DBRA) will be ineligible (*debarred*) to participate in any DBRA or Davis-Bacon Act contracts for up to 3 years. Debarment includes the contractor or subcontractor and any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest. Debarment proceedings can be recommended by the contract administrator or can be initiated by the DOL on its motion. Debarment proceedings are described in DOL regulations 29 CFR 5.12.

3-6 FALSIFICATION OF CERTIFIED PAYROLL REPORTS. Contractors and /or subcontractors that are found to have willfully falsified payroll reports (Statements of Compliance), including correction certified payroll reports, may be subject to civil or criminal prosecution. Penalties may be imposed of \$1,000 and/or one year in prison for each false statement (see Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code).

☺ Remember, if you have any questions or need assistance concerning labor standards requirements help is always available. Contact the MaineDOT Civil Rights Office.

EXHIBITS

MaineDOT Fringe Benefit Statement
MaineDOT Employee Pay Restitution Worksheet
WH-347 Payroll Form

Employee Pay Restitution Worksheet

1. Name of Company: _____
2. Name & Title of the
Person Completing This Report: _____
(Printed Name) (Title)
3. Phone Number: _____ Fax: _____
4. Name of Project: _____ Project #: _____
5. Payroll Week Ending: _____
6. Employee: _____
Name Work Classification
7. Total Hours Worked: _____
8. Payment Breakout:
- a. Straight Time Paid: _____ @ _____ = _____
Number Hours Pay Rate Sub-Total
- b. Overtime Paid: _____ @ _____ = _____
Number Hours *Pay Rate Sub-Total
- * - Must be no less than the "base rate" as listed in the Contract/Davis-Bacon Act for this work classification (amount not including fringes).
9. Total Amount: \$ _____
10. Amount Previously Paid to Employee: \$ _____
11. Total Amount of Line 9: \$ _____
12. Difference (line 11 minus line 10): \$ _____ (**Total Amount Due Employee**)

CERTIFICATION: This is to certify that a check in the amount of \$ _____ was made out to _____ on _____. A copy of this check is attached as proof of restitution. The amount paid includes overtime computed at a rate of one and one half times the base pay rate due the employee according to the Contract and the Davis-Bacon Act. I understand that a separate worksheet must be completed on each employee, for each payroll period in question (one restitution check can be used). The total will equal the full amount owed the employee.

Signature

Date

State of Maine – Department of Transportation
FRINGE BENEFIT STATEMENT

February 8, 2007

CONTRACTOR/SUBCONTRACTOR	CONTRACT NUMBER	FEDERAL AID PROJECT #	DATE
TO: RESIDENT ENGINEER/LABOR COMPLIANCE OFFICER		BUSINESS ADDRESS	

The following information (as shown on wage rate determinations) paid to or on behalf of employees in various crafts or classifications is used to check payrolls or applied to force account work on the above contract.

THIS FORM MUST BE COMPLETED AND SUBMITTED WITH THE FIRST CERTIFIED PAYROLL, OR WHEN THERE HAVE BEEN ANY CHANGES.

CLASSIFICATION	FRINGE BENEFIT HOURLY AMOUNT	NAME AND ADDRESS OF PLAN, FUND, OR PROGRAM
Effective Date	Vacation \$ _____	
	Health & Welfare \$ _____	
	Pension \$ _____	
Travel Pay	Apprentice/ Training \$ _____	
\$ _____	Other \$ _____	
CLASSIFICATION	FRINGE BENEFIT HOURLY AMOUNT	NAME AND ADDRESS OF PLAN, FUND, OR PROGRAM
Effective Date	Vacation \$ _____	
	Health & Welfare \$ _____	
	Pension \$ _____	
Travel Pay	Apprentice/ Training \$ _____	
\$ _____	Other \$ _____	
CLASSIFICATION	FRINGE BENEFIT HOURLY AMOUNT	NAME AND ADDRESS OF PLAN, FUND, OR PROGRAM
Effective Date	Vacation \$ _____	
	Health & Welfare \$ _____	
	Pension \$ _____	
Travel Pay	Apprentice/ Training \$ _____	
\$ _____	Other \$ _____	